



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20230264SW0000888DA2

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1530/2022-APPEAL / 6481-86
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-120/2022-23 and 17.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.02.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-009-21-22 dt. 24.12.2021 passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Rameshbhai Mangalbhai Prajapati, Plot No. 242/2, Sector-1/C, Near Gayatri Temple, Gandhinagar, Gujarat-382006

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

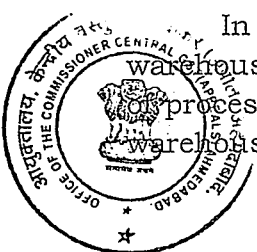
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

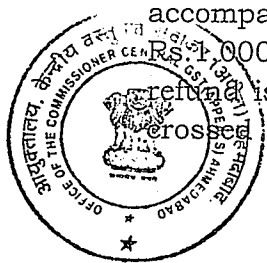
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public



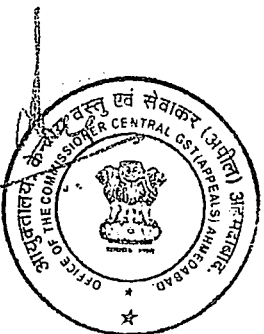
अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Rameshbhai Mangalbhai Prajapati (HUF), Plot No.242/2, Sector 1C, Gandhinagar-382001 (hereinafter referred to as the "appellant") against the Order-in-Original No. AHM-CEX-003-ADC-PBM-009-21-22, dated 24.12.2021 (hereinafter referred to as the "impugned order") issued by Additional Commissioner, CGST & C.Ex., Gandhinagar (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were engaged in business activity of providing taxable services and holding Service Tax Registration No.AAPHR3352DSD001. Based on the data received from the Income Tax department for F.Y. 2015-16, it was observed that there was a discrepancy in payment of service tax by the appellant. It was gathered that the appellant was engaged in Renting of Immovable Properties by obtaining the same on rent from different persons and renting them to other party namely M/s TCS, who in turn allotted the same properties to its employee for their residential purposes over a period of time. Hence, it was alleged that the appellant was liable to pay Service Tax.

3. Subsequently, the appellant was issued a Show Cause Notice dated 12.10.2020 demanding service tax amount of Rs.65,69,393/- under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Act and proposing to impose penalty under Section 76, 77 and 78 of the Finance Act, 1994.

3.1 The appellant had, during the course of adjudication, submitted that the income received was from renting of residential flat, which is covered under Negative List as per Section 66D(m) of the Finance Act, 1994. However, the contention of the appellant was not accepted and the adjudicating authority has confirmed the demand of Service Tax amounting to Rs.65,69,393/- under the proviso to Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Act and imposed penalty of Rs.10,000/- under Section 77(2) and penalty of Rs.10,000/- under Section 77(3)(c) of the Finance Act, 1994 penalty of Rs.65,69,393/- under Section 78 of the Finance Act, 1994, and not imposed penalty under Section 76 of the Act.



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

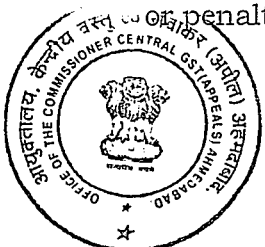
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



4. Aggrieved by the impugned order, the appellant has filed the present appeal, on 31.05.2022, contending, *inter alia*, that:-

i) the show cause issued was time barred as extended period of 5 years is applicable in events of (i) fraud, (ii) collusion, (iii) misstatement, (iv) concealing information with the wilful intent to defraud revenue and (v) not following any provisions of law. The Apex Court in the case of *M/s Cosmic Dye Chemical - [1995 (75) ELT.721 (SC)]* has held that the burden is on the revenue to prove any of the above elements to uphold validity of extended period and that detailed verification must be made prior to issue of show cause notice. They contended that the adjudicating authority has also not shown any wilful default, fraud or collusion by the appellant in the show cause notice.

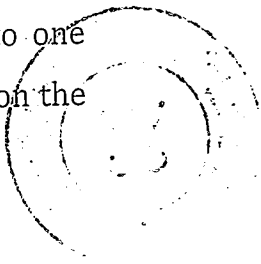
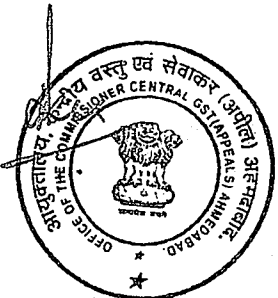
ii) The Section 66D(m) of the Finance Act, 1994 provided that when a residential dwelling is let out as such and is used for residence, then service tax will not be charged on such transactions. They contended that they had let out only residential property to be used as residence by the lessee. So denying them the exemption is not correct.

iii) As per intention of the legislature, the end use is to be considered and not the person who is providing the services.

5. Personal hearing in the case was held on 09.01.2023. Shri Geet Mecwan, Chartered Accountant, authorized representative of the appellant, appeared for the hearing. He stated that the appellant was away from India and hence appeal has been filed in May. He also reiterated the submissions made in appeal memorandum.

6. While dealing with the issue of condonation of delay, it is observed that the impugned order was issued on 24.12.2021 and appellant had claimed its receipt/ date of communication on 25.05.2022.

6.1 To ascertain the date of service/ communication of the impugned order, the matter was taken up with the jurisdictional Gandhinagar Commissionerate. O & A Section, HQ. CGST & C.Ex. Gandhinagar, vide email dt. 07.07.2022, has forwarded the dated acknowledgement receipt in respect of the impugned order. As per the acknowledgement receipt, the impugned order was served on 04.02.2022 to one person namely Shri Bharatbhai Vanjhara, the driver of the appellant. It is not on the



record as to whether the driver who received the impugned order was duly authorized by the appellant to receive such legal documents or otherwise.

6.2 I find it relevant to refer to the CBIC Circular No. 1053/02/2017-CX, Dated the 10th March,2017, wherein at Para 23, procedure for Service of decisions, orders, summons has been prescribed. Same is re-produced below :-

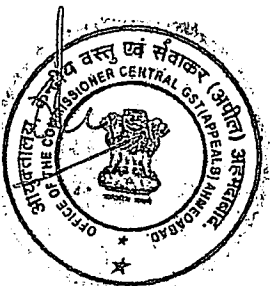
"23: Service of decisions, orders, summons, etc:-

The statutory provisions for Service of decisions, orders, summons, etc. have been provided under Section 37C of the CEA, 1944. The Section provides that the service of interalia of any order or notice, which would include a SCN or an adjudication order needs to be carried out in prescribed manner for the service to be considered complete. The Section provides for various methods of service such as by tendering or sending it by registered post with acknowledgment due or as a fallback, by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person or as a further fallback, by affixing on the notice board of the officer. For further details, the Section may be referred."

6.3 It is observed that in the instant case the impugned order was neither sent by registered post with acknowledgment due *nor* by affixing a copy thereof to some conspicuous part of appellant's place of business *nor* on the notice board of the officer. Therefore, I find that the adjudicating authority has failed to follow the procedure for service of the order as prescribed by the CBIC.

6.4 The appellant, in their application for condonation of delay, has mentioned that they had visited abroad during the period from 01.12.2021 to 25.05.2022, due to which they received the order on 25.05.2022. The Appellant has submitted the copies of their arrival / departure tickets/ passport and visa as proof of their travel to abroad. On verification of these travel documents, it is observed that the appellant Shri Rameshbhai Mangalbhaji Prajapati had departed to abroad from India on 01.12.2021 and arrived back to Ahmedabad on 25.05.2022.

6.5 Therefore, this appellate authority has considered the date of service of the order as 25.05.2022 i.e. the date appellant claimed as the date of communication of the impugned order. Therefore, I am inclined to consider the request of the appellant and treat the appeal to be filed within time-limit.



7. I have carefully gone through the facts of the case and the submissions made by the appellant. The question to be decided in the present appeal is as to whether the service provided by the appellant by way of renting out residential premises to M/s TCS for the residential purpose of its employees is covered under Negative List as per Section 66D(m) of the Finance Act, 1994 or otherwise. The demand pertains to the period F.Y. 2015-16.

8. It is observed that there was discrepancy in the payment of service tax by the appellant as per the data received from the Income Tax Department. It was further found that the appellant was engaged in providing Renting of Immovable Properties services for commercial purposes. Therefore, the appellant was issued SCN demanding Service Tax on the income earned from Renting of Immovable Properties by considering the same as income earned from providing taxable services. The appellant submitted before the adjudicating authority that the renting of residential flat is covered under Negative List as per Section 66D(m) of the Finance Act, 1994. However, the contention of the appellant was not accepted and the adjudicating authority had confirmed the demand of Service Tax, along with interest and penalty, vide the impugned order.

9. I find that the adjudicating authority, in the impugned order, has observed that the exemption is available only if the immovable properties/ flats are rented for residential purpose given to a person or his family for a reasonable period and not for different persons over a period of time. He further observed that the appellant has obtained flats/property from different persons for commercial purpose and rented them to M/s TCS, who in turn had allotted the same to its employees for their residential purposes over a period of time. The adjudicating authority has, thus, concluded that the flats were given for commercial use and not for pure residence purpose, hence exemption was not available.

9.1 I find that the adjudicating authority has come to the above conclusion that the flats were given for commercial use without verification of the facts regarding total number of flats rented to M/s TCS and who were residing in the said rented flats and also the period of stay of the persons or the families. It is also not on the records as to how the adjudicating authority has given his findings and came to the conclusion without verification of documentary evidences viz. (i) Rent agreements between the actual owners of the flats & the appellant, (ii) Contract/Rent



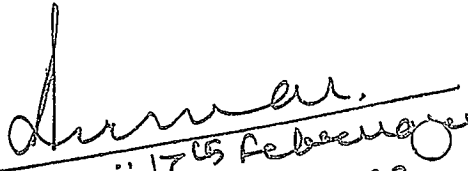
agreements between the appellant and M/s TCS & (iii) Period of stay of persons/families. The adjudicating authority should have given comprehensible findings on these aspects after due verification of documents / evidences. I further find that the adjudicating authority has not discussed on the Ruling of Advance Ruling Authority of West Bengal in case of the applicant M/s Borbheta Estate Pvt. Ltd., relied upon by the appellant in their defence during adjudication proceedings. Hence, I find that the impugned order is a non-speaking order.

9.2 It is further observed that the appellant has not submitted any documents in appeal memorandum to establish their claim for exemption. In view of the above, I am of the considered view that the matter is required to be remanded back for denovo adjudication for verification of the contracts / agreements / ruling as discussed above, after affording the appellant the opportunity of personal hearing.

10. In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh, after following the principles of natural justice. The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant is also directed to appear before the adjudicating authority as and when personal hearing is fixed by the adjudicating authority. Accordingly, the impugned order is set aside and the appeal of the appellant is allowed by way of remand.

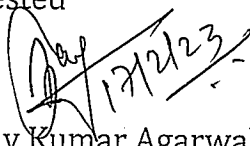
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the *appellant* stands disposed of in above terms.


 (Akhilesh Kumar) 17.02.2023..
 Commissioner (Appeals)

Date: 17.02.2023

Attested


 (Ajay Kumar Agarwal)
 Assistant Commissioner [In-situ] (Appeals)
 Central Tax, Ahmedabad.



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4. The Assistant Commissioner, CGST & C.Ex., Division-Gandhinagar, Commissionerate: Gandhinagar.
5. The Superintendent (Systems), CGST, Appeals, Ahmedabad. (for uploading the OIA).
- ✓ 6. Guard File.
7. P.A. File.



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